Neutral Citation Number: [2023] EWHC 1591 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
SHEFFIELD DISTRICT REGISTRY

Claim No. D90SEO64

Sheffield Combined Court Centre,
50 West Bar, Sheffield, S3 8PH

Date: 28 June 2023

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Before:

MR STEVEN GASZTOWICZ KC

sitting as a Deputy High Court Judge

BETWEEN:

THOMAS AUBREY JAMES NEEDHAM

Claimant

-and-

THE MASTER AND FELLOWS OF THE COLLEGE OF THE GREAT HALL OF THE UNIVERSITY OF OXFORD

Defendant

Mr Neil Fawcett (instructed by **Duncan Lewis Solicitors**) for the **Claimant**
Miss Judy Stone (instructed by **Farrer & Co**) for the **Defendant**

Hearing dates: 30 May 2022 – 1 June 2022, 6-10 June 2022, 14 – 15 July 2022,23 -25 November 2022, 28-30 November 2022, 27 February 2023, 4 April 2023

Approved Judgment
I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

MR STEVEN GASZTOWICZ KC:

1. The trial in this action began on 30 May 2022. However, on 10 June 2022 the Claimant's then counsel became unwell and could not continue. Following an adjournment, the trial continued on 14 July 2022. However, at the hearing on 15 July 2022 the Claimant's counsel became unwell once more, and the trial was again adjourned part-heard. There was then a significant delay to enable the instruction of replacement counsel, Mr Neil Fawcett, and the trial continued in late 2022, followed by detailed submissions in February and April 2023. I am grateful both to Mr Fawcett for the Claimant, and to Miss Judy Stone for the Defendant, for the assistance they have given.

The Claim

2. The claim is for an injunction and damages for breach of contract, relating to the Claimant's education at University College, Oxford (formally known as the College of the Great Hall of the University of Oxford), which I shall refer to as 'the College'. An overlapping claim in negligence was not pursued at trial.

3. Though obviously connected with Oxford University, the College is a separate legal entity and students have separate contracts with the University and the College. The University was not at trial a party to the proceedings.

4. I will set out the alleged breaches of contract by the College in detail in due course.

Evidence

5. The Claimant gave evidence and called as lay witnesses his father, Mr Francis Needham, and his mother, Mrs Dinah Needham; and as expert witnesses Mr John Hall (an educational psychologist) and Dr Mark Cheesman (on occupational questions).

6. In addition, the witness statement of Mrs Angela Austin was admitted as hearsay evidence. She was unwell and unable to attend the trial. As was accepted by the Claimant's counsel, her inability to be cross-examined reduced the weight able to be attached to her statement.

7. The College called as lay witnesses Dr Martin Galpin, Dr Andrew Whitehouse, Dr Anne Knowland, Dr Andrew Gregory and Sir Ivor Crewe; and as an expert witness, Mr Paul Jackson (on occupational questions).

8. In considering this matter, I have taken into account all the evidence given at trial and in writing, and all the documentation to which I was referred, whether I specifically mention any particular parts of it or not. The trial was held over a total of eighteen days and the evidence and facts will necessarily be summarised. I have also considered and taken into account all the authorities referred to at trial.

Pre-College Background

9. The Claimant was born on 14 February 1983. He attended Eton College and achieved 12 GCSEs, all at the top grade, A*. In September 2000 he applied to the College to study Chemistry. This was for a four year course for an MChem degree.

10. The Claimant subsequently became increasingly anxious, anorexic and depressed, and left Eton College in November 2000 before his 'A' levels.

11. In December 2000 the Claimant was offered a place at the College starting in October 2001 conditional on achieving grades A, A, B in the 'A' levels he was due to take in summer 2001, with one of the A grades to be in chemistry. This offer was made without the Claimant attending for a proposed interview, on the basis of his results to date, as he was in hospital at the time. He accepted the offer.

12. In April 2001 the Claimant informed the College that he was unlikely to be able to take his 'A' levels in summer 2001 and he sought deferral of the offer made to him.

13. In a letter to the College dated 3 April 2001 a consultant psychiatrist, Dr Kay Callender, said the Claimant had been, and was, suffering from anorexia nervosa and depression. She said that he had been making a very encouraging recovery, but that deferral of his place until 2002 would be in his best interests.

14. The College agreed to defer the offer of a place on the course to October 2022, on the same conditional basis of obtaining A, A, B grade 'A' levels, as long as he was then medically fit to do it. As previously, he accepted this offer.

15. The Claimant then obtained A grades in maths, chemistry, and physics. However, he did this after sitting the exams one subject at a time, six months apart, in June 2001, January 2002, and June 2002.

16. The Claimant joined the College and began his 4 year MChem course in October 2002, being considered by his psychiatrist as fit to do so.

Events during the Claimant's time at College

17. The events that occurred during the Claimant's time at the College are very largely shown by contemporaneous correspondence or other documents and not in dispute. As well as describing these, there are also some findings and comments that it is appropriate to make in relation to them.

18. It is also to be noted at this point that the Claimant consented to his mother, Mrs Dinah Needham, at relevant times acting on his behalf in relation to correspondence she undertook with the College, and on 2 August 2010 signed a formal notice authorising his parents to do anything that appeared to them appropriate in relation to matters concerning the College.

19. During the first year of his course (in the academic year 2002-2003) the Claimant had what he described in his second witness statement as “an episode of depression and eating disorders”.

20. In February 2003 the College gave him the option of deferring his end of first year exams until 2004. However, he elected not to do that. Instead, in line with his wishes, a special arrangement was made for him to remain in College to study over Easter.

21. In June 2003 the Claimant sat his first year University exams (known as ‘Prelims’). He obtained satisfactory results in three of the four papers, but did not achieve the pass mark in inorganic chemistry. He was therefore required to re-sit that paper in September 2003.

22. However, on 16 September 2003 Dr Callender wrote to the College stating it was inadvisable for him to take the re-sit exam that month due to depression and that he would benefit from a year out of University. She said he was on medication and receiving specialist help.

23. As a result, the Claimant was permitted by the College to go ‘out of residence’ (ie leave the College) for that academic year, which he did, and to return in October 2004, subject to providing a medical certificate in September 2004 confirming his fitness to return to full-time academic work and passing the necessary re-sit exam.

24. Despite some confusion in the correspondence, it is agreed by both parties that the re-sit exam in organic chemistry was set to take place in June 2004, with a view to readmission (to undergo his deferred second year) in October 2004.

25. However, on 20 May 2004, with the re-sit imminent, Dr Callender wrote to the Senior Tutor of the College, who was at that time Clare Drury, to say that the Claimant’s depression had suddenly worsened and that it was inadvisable for him to undergo the stress of exams at that time. The Claimant formally withdrew from the re-sit.

26. In the summer of 2004 Clare Drury sadly passed away.

27. The Senior Tutor of the College was, amongst other things, the point of contact for students and tutors should there be a need for special arrangements or when issues arose during examination periods, and ensuring systems were in place for monitoring academic progress of students, including start of term College examinations known as ‘Collections’, which I shall refer to again shortly.

28. Dr Anne Knowland was appointed Senior Tutor from 1 October 2004. Further detail in relation to the Senior Tutor’s role, the structure of the College and the role of others, were set out in, and can be seen from, Dr Knowland’s witness statement, which stood as her evidence in chief and was not in this respect challenged.

29. The Claimant’s mother, Mrs Dinah Needham, e-mailed Dr Tony Orchard (senior

chemistry tutor) on 29 October 2004 to say that Mrs Drury had agreed that the Claimant could re-sit the exam the following summer, 2005, and could return to College for a term before he did this, saying that he was getting better, and asking for confirmation this was possible.

30. Following consultation with Dr Knowland, Dr Orchard replied on behalf of the College the next day agreeing to this and hoping to welcome the Claimant back in the summer (Trinity) term of 2005.

31. On 11 January 2005 Dr Knowland e-mailed Mrs Needham stating that she was pleased to learn from the chemistry tutors that the Claimant was very much better, that she hoped he would be able to resume his studies, and that, in accordance with standard practice, the College would need a statement from his consultant psychiatrist confirming he had recovered "and would be able to deal with the course, the inevitable stress of the examinations, and life in Oxford". This was not surprising in the circumstances and entirely reasonable in the interests of the Claimant himself.

32. On 31 January 2005 Dr Callender wrote to Dr Knowland saying that the Claimant had recovered from an acute episode of depression and anxiety and that she considered he would be able to deal with his course, the stress of examinations and life in Oxford. She noted that he "was planning to return for the Trinity term and to re-sit the preliminary examination paper that he failed".

33. The Claimant remained at the family home in Derbyshire, and on 4 March 2005 wrote to Dr Knowland stating that "Following Dr Callender's assessment of my health, I feel that it is possible for me to consider my University and College status more sincerely than I have done .... in the last eighteen months", and said that he was formally resigning.

34. This might have been viewed as a realistic decision by him in view of his circumstances to date, and since, indeed, beginning his last year at Eton. However, his parents found this difficult to understand, or, indeed, take, and his father wrote to Dr Knowland accordingly. He said his wife had almost collapsed when the Claimant had told her what he had done, and that despite what Dr Callender had said, he may still be ill and "not entirely rational". He referred to the fact that his illness "was preventing him from steeling himself to take the [re-sit] paper".

35. They had, of course, got a son who had gained exceptionally good GCSEs (only subsequently developing problems), and they obviously wanted him to achieve what they considered was his full potential.

36. On 9 March 2005, no doubt following family discussions, the Claimant wrote to Dr Knowland withdrawing his resignation, saying he was seeking further advice on whether he was in fact well enough to return to University, but that he wanted to go ahead and complete the chemistry course.

37. Dr Knowland and Dr Orchard agreed to overlook the resignation. There was again

some doubt over whether the Claimant was really fit to return, however, and they wanted to be reassured the Claimant was well enough to do so, and also that his parents were going to arrange the necessary medical support following his return. Dr Knowland set this out in an e-mail on 11 March 2005. Had they had wanted the College to be free of the Claimant they could have taken a different approach to the unqualified resignation he had earlier sent, but it is clear they were keen for him to continue if he was fit to do so.

38. On 3 May 2005 Dr Deborah Waller, a general practitioner at the 19 Beaumont Street practice in Oxford, provided a letter saying the Claimant was fit to resume his studies.

39. Despite being 'out of residence', the Claimant was allowed to return to College for Trinity Term to help him prepare for his organic chemistry re-sit. In this, the College adopted a flexible approach aimed at assisting him.

40. The Claimant took, and passed, this re-sit in June 2005.

41. He began his deferred second year of the course in October 2005.

42. It is necessary to explain at this point what 'Collections' in the University of Oxford are. They are internal college examinations normally held at the start of each term, though not usually at the start of Michaelmas term (in October) assuming the student has sat University exams at the end of the previous term. They are held in order to monitor academic progress, to enable strengths and weaknesses to be identified, and to ensure the student has the necessary learning to understand what follows and to be able to build on it and in due course to pass the University's exams.

43. The Claimant was not required to sit Collections in October 2005 as he had sat a 'Prelim' (although only one re-sit) the previous term.

44. However, five weeks into the academic year, the Claimant was unable to continue with the course due to high levels of anxiety and returned home to Derbyshire.

45. The Claimant confirmed this in his second witness statement. There was no suggestion in the evidence or otherwise this was in any way the fault of the College.

46. The Claimant decided to do so and the College granted him permission, with him returning the following term, in January 2006. As shown by an e-mail of 5 December 2005 to his father, he was sent tutorial work and the work set for the Christmas vacation by the chemistry tutors.

47. However, the College was told on 11 January 2006 that the Claimant would not be returning that term either.

48. In the Claimant's evidence there was some criticism of Dr Knowland for suggesting he take the rest of the year off as a result. However, she merely said in her letter of 5 February that having missed so much course time and tuition, his best bet on the face

of it was to get completely fit and return for a fresh start in the new academic year. In my judgment this, was entirely understandable and reasonable in the circumstances, and aimed at helping the Claimant. It was of course ultimately his decision to seek to do so, which he did.

49. On 8 February 2006 Dr Knowland wrote to the Claimant that the Governing Body had given permission for him to go out of residence on medical grounds and set out the implications of this, and that in order to return into residence in October 2006 confirmation would be required by the start of September 2006 from his consultant psychiatrist and his GP that he was fit to complete the rest of his degree course. The Claimant thanked her on 20th February, stating he had consulted a new doctor and received new medication and therapy.

50. On 3 March Dr Knowland wrote to the University's Educational Policy and Standards Committee seeking permission for the Claimant to be granted dispensation from the University's requirement for graduation within the number of terms that would now be exceeded, which permission was granted. It is to be noted that deferment was not something able simply to be granted by the College but that the University had to agree to the Claimant still taking a degree despite the expected number of terms leading to that being exceeded.

51. On 8 September a certificate was provided by the Claimant's GP indicating he was fit to return, and on 27 September a letter from Dr Kaligotla, the Claimant's new consultant psychiatrist, stated he was fit to return.

52. In October 2006 the Claimant returned to once again attempt his second year of the MChem course.

53. However, by 25 November he had left College again and it was told he would not be returning that term.

54. On 18 January 2007 Dr Knowland wrote to the Claimant giving permission for him again to go out of residence, and allowing him to return in October 2007 so long as a medical certificate was provided stating he was then fit to return.

55. In late 2007 a new psychiatrist recommended an autism assessment for the first time, despite numerous psychiatrists and other medical professionals having previously been involved.

56. In January 2007 the Claimant attended the Cambridge Lifespan Asperger's Syndrome Service ('CLASS') and was diagnosed by Dr Janine Robinson as having Asperger's syndrome.

57. Dr Robinson wrote to Dr Knowland on 5 February confirming the Claimant met the criteria for Asperger Syndrome, setting out things that she thought might be helpful to him at University, such as having a named mentor.

58. The College as a result organised a detailed Study Needs Assessment ('SNA'), which was carried out in March 2007 by the independent Cambridge Access Centre.

59. Although the Claimant in evidence criticised the College for the SNA being carried out in College in 2007, rather than in Sheffield, closer to his Derbyshire home, on the basis that by 2010 at least a team based there were carrying out most such assessments on the College's students, he accepted under cross-examination that in fact they did not do so in Sheffield, but in Oxford, in order to have access to University staff for information. He had also, of course, chosen CLASS in Cambridge for his autism assessment, which would have involved similar travelling. There was therefore nothing unusual or unreasonable in this.

60. The SNA noted that "From the account given by Thomas, those teaching him have shown great understanding and sympathy", and that "his College is anxious to see that all constructive support is in place"'.

61. The report recommended certain equipment that might be of assistance to the Claimant, which has not featured in the case. Leaving that to one side, its principal recommendations, as focused on in the Claimant's case, were as follows:

    (i) the Claimant should have a mentor who was an experienced professional with an understanding of Asperger's and depression, whom he would meet at least once a week for an hour during term time (at a cost of up to £45 per hour) and would trust to act in his interest, referring matters of concern to the University and who should be concerned to note that he was maintaining his mental health; and

    (ii) it would also be helpful if the Claimant had a mentor of a different kind, preferably someone with a chemistry background familiar with the assessment requirements of his course. It was said that "Again, this mentor should be in touch with Thomas for an hour a week during term time" at a cost of up to £12 per hour), but with any request for more time to be looked on sympathetically by the local authority providing the funding.

62. In May 2007 there was a meeting between the Claimant and his mother and Dr Knowland, Peter Quinn (Head of the University's Disability Office), Bob Thomas (Senior Chemistry Tutor) and Jane Vicat (College Secretary) at which they agreed to put support in place.

63. The possibility of a transfer to a less demanding University with a different tutorial environment to Oxford was discussed, but Dr Knowland confirmed by letter dated 24 July 2007, that if the Claimant wished to stay at Oxford the College would "support you wholeheartedly, and implement, to the best of our ability, the recommendations in the report prepared by the Cambridge access centre". The letter confirmed the tutors who would be in place for the next academic year, 2007-2008, and asked for the Claimant to let her know by early August what he wished to do.

64. Dr Knowland pointed out that the Educational Policy and Standards Committee of

University Council agreed to allow him to return in October 2007 on condition he recognised this would be his final attempt to continue his degree course, sitting part 1A exams in 2008, 1B in 2009 and II in 2010.

65. The letter went on to state, as previously, that, the College having let him go out of residence on medical grounds, he was, in line with standard practice, required to provide a medical certificate from his College, that he was able to cope with the demands of the course and the pressure of exams, and that he would need to undertake all the work required.

66. The Claimant by letter of 12 August 2007 said that he wanted to return to College at the start of the 2007-2008 academic year "to complete….the remainder of the Chemistry course without interruption".

67. He mentioned in the letter, amongst other things, that he had a new therapist, Angela Austin, who lived near Oxford, who was keen to liaise with the mentors that would be provided.

68. It is to be noted that Mrs Austin was not, however, put in place by the College and her appointment or engagement with the College was not something that had been recommended by the SNA as part of the identified arrangements.

69. Mrs Austin asked for a meeting with those involved in supporting the Claimant at the University and this took place on 26 September 2007, attended by Dr Gregory (the College chaplain and disabled persons' officer), Ann Poulter (of the University's Disability Office), Alison Crowther (the College nurse), and Dr Sarah Jenkinson (a chemistry lecturer). This enabled her to be heard on anything she wanted to say and to understand what the College was doing. It did not, however, alter her status and she continued as a private therapist involved with the Claimant outside the University, rather than anything else.

70. The College appointed Dr Andrew Whitehouse as a mentor with an understanding of Asperger's, and Mr Tom Brown was appointed as the Claimant's chemistry mentor.

71. Dr Whitehouse, in brief summary, had trained as a speech and language therapist and completed a PhD in Perth, Australia in 2005 and spent two years as a post-doctoral researcher at Oxford University, contributing to projects that sought to understand more about the neurobiology of autism. He was appointed Janice Scott Research Fellow of the College, specialising in autism, in July 2007.

72. Andrew Whitehouse had spent time clinically working with young men with AS aged 12 to 15. He was enthusiastic about the role and on the evidence presented at trial he was an appropriate person to be appointed as mentor in that role. There was no complaint about his appointment at the time. Although reference was made in the Claimant's evidence to Anne Poulter of the University's Disability Advisory Service suggesting bringing in as a mentor a member of Dr Bailey's research team with autism experience, Dr Wittemeyer, that does not alter the fact that Dr Whitehouse was

appropriate or mean Dr Wittemeyer should have been appointed in place of, or in addition to, him.

73. It is also clear that Dr Whitehouse provided very much more than an hour a week's support, and I am satisfied did his best at all times to support the Claimant. I am satisfied that in him the College appointed a suitable mentor for a reasonable period of time each week, and that he provided reasonable support. There is no allegation otherwise in the pleadings and it is not necessary to go into further detail in relation to this.

74. Mr Tom Brown was a chemistry graduate who had been at the College and, again, there was no complaint about his appointment and indeed Angela Austin e-mailed Dr Whitehouse on 10 October 2007 saying the Claimant spoke about both Tom Brown and him positively to her. Again, it is not necessary to go into further detail here. I will, however, refer to Tom Brown further below.

75. Thereafter, Mrs Austin contacted Dr Whitehouse a considerable number of times over the following weeks. Although I do not doubt she was well intentioned, I equally consider from the evidence, both documentary and oral, that her frequent contact grew to become an excessive and unnecessary distraction to Dr Whitehouse in his attempts to support the Claimant, and went well beyond what could reasonably be expected. I find as a fact that this grew to such an extent that the arrangement was becoming unworkable, as Dr Whitehouse said in his evidence.

76. Mrs Austin was asked by Dr Gregory on 9 November 2007 to cease to contact Dr Whitehouse directly, and to go instead through the University's Senior Disability Officer. I consider this was reasonable in the circumstances. I also, again, note, however, notwithstanding criticisms made in evidence, that there is no specific complaint about this in the Claimant's pleadings and the highest it is put is that factually "Mrs Austin did not believe this to be in the Claimant's best interests". All this is, of course, aside from any breach of contract claim from 2007 being out of time, as is accepted on the Claimant's behalf, which I shall refer to further in due course.

77. After Mrs Austin received the letter from Dr Gregory, she said in a letter to Mr and Mrs Needham on 12 November 2007 that the request for her not to directly contact Dr Whitehouse "may be related to the fact that Andrew Whitehouse had e-mailed me saying he was concerned that the management had 'itchy fingers on the trigger' about Tom".

78. Dr Whitehouse in his evidence had no recollection of saying this, and no such e-mail has been produced, despite other e-mails between them being available. In her witness statement, Mrs Austin said in contrast that this was said "in a phone call with Dr Whitehouse". Although she was e-mailing Dr Whitehouse around this time, none of her e-mails to him referred to it, nor did her reply to Dr Gregory. Mrs Austin was clearly keen for contact to continue as before, and making clear to Mr and Mrs Needham in the letter on 12 November her view that it should.

79. Mrs Austin has not given oral evidence, which is no-one's fault, but in the absence of

the ability to ask her questions I cannot be sure whether she is saying this phrase was actually used or it was simply her interpretation of things said (with the inverted commas being used just because of the colloquial nature of the phrase).

80. Given the discrepancy I have referred to in paragraph 78 above, the absence of any e-mails referring to it, the circumstances I have described, and the oral evidence of Dr Whitehouse, I cannot conclude on the balance of probabilities that this was said or accurately reflected the position. I am satisfied on the evidence I have heard that Dr Knowland, Dr Gregory and others involved at the College did not in fact want the Claimant to leave, or to do anything other than to help him, let alone to want to do so imminently as the use of this phrase by Mrs Austin implied.

81. Dr Knowland wrote to the Claimant on 3 December 2007 following a meeting with him. She was in fact positive about his work, and reported how his tutors were confident that, though like many students he found mechanisms challenging, this would become easier with practice. She concluded that the best approach was for him to consolidate his work over the Christmas vacation and then sit Collections at the beginning of term. These were, she said, "a very important diagnostic tool and will tell your tutors, and you, whether there are any gaps in your understanding and knowledge", that lab work that there had been some problems with did not count towards Finals, that she was "delighted that things had gone so well", that "Next term is the time when you will need to fill any gaps", and that he could count on their ongoing support.

82. There is nothing to suggest this was other than genuinely written as Dr Knowland's view and it shows her being positive and encouraging to the Claimant. It also set out quite clearly the reason for Collections, which were something the Claimant subsequently failed to undertake and ultimately sought to avoid.

83. However, after Christmas Angela Austin e-mailed Dr Whitehouse directly to say that the Claimant had had a "very difficult time at home in Derbyshire" and was "in an extremely low mood despite all the positive words and support he has been given". She said that he had not done any assignments set for the holiday and was being "extremely difficult with his parents" and "very bulimic". She said he did not want to return to Oxford but that his mother had driven him there anyway.

84. Despite, no doubt, his parents doing the best they could to care for him, it is not in dispute that this was what happened and this meant he was not able to sit Collections in January. On the undisputed evidence, the Claimant had been at home in Derbyshire, fully supported by his parents, but had not done his assignments, and was not in a fit state to do Collections. There is no evidence this was the fault of the College, and it plainly was not.

85. Though the other students sat their Collections in January 2008, the Claimant was permitted to defer them to February, to do them in his own time, and without an invigilator. This indicates the College were doing what they could to facilitate Collections for the Claimant, which I accept they reasonably saw as important from the point of view of his progression, as alluded to in the letter of 3 December 2007, as

opposed to being a barrier to that progression.

86. It is, however, to be borne in mind that the Claimant would have to face University examinations in due course, which could not be avoided, and facing the challenge of exams was something necessary to obtaining a degree, even though these Collections, which did not count in terms of marks towards the degree itself or its class, merely requiring a basic threshold to be met. Taking Collections, and seeing what they showed, was a reasonable thing, designed to help progress.

87. Having sat Collections, the Claimant received a low mark of just 22% in one of the papers, that of Organic Chemistry, with some concerns also arising out of his answers in the other papers.

88. A meeting took place on 8 February 2008 between Dr Knowland and the Claimant's chemistry tutors to review his performance. It was decided that rather than continue with the mentoring by Tom Brown it would be better for the Claimant to receive one-to-one tutoring in order to help him and to enable him to develop problem-solving techniques.

89. Some criticism was made in the evidence for the Claimant about the replacement of Tom Brown by one-to-one tutoring. However, it must be remembered that the SNA did not have the status of a statute and did not set out a series of statutory requirements, but contained recommendations and the whole aim was help the Claimant through his course, which needed to be done flexibly, dealing with whatever difficulties arose and putting measures in place to best help him. The Claimant also said in evidence that he asked for the peer group support to be discontinued (being embarrassed because Tom Brown had been a year ahead of him at College and was now doing his PhD). The particular problems faced were in my judgment reasonably addressed, on the information then available, by the one-to-one tuition replacing Tom Brown's involvement.

90. This also tends to confirm the value of Collections in identifying areas of required improvement and working out the best ways of assisting progress.

91. All this is aside from the fact that the replacement of Tom Brown's involvement with one-to-one tuition did not feature in the Claimant's pleadings as something which should not have been done.

92. In contrast, it is said in paragraph 23 of the Amended Particulars of Claim ('APOC'), as part of the narrative of events, that Dr Knowland had been asking questions of the College GP about the Claimant's health, which he declined to answer. However, this, if it occurred, merely confirms in my view that Dr Knowland was concerned for the Claimant's health.

93. The Claimant had to sit his University Part 1A Finals in June 2008.

94. Dr Knowland suggested he sat them in a side room but he was clear that he did not

wish to do so. It was suggested at trial that it may have been better had he done so, but Dr Knowland would have been open to obvious criticism had she not respected his wishes as to what he considered best and wanted to do.

95. A further criticism which found some place in the evidence on the Claimant's side was that Dr Whitehouse was not available to walk the Claimant to an exam room. However, I accept Dr Whitehouse's evidence that he discussed this in advance with the Claimant who did not at the time consider it necessary and that Dr Whitehouse offered to be available on the 'phone if required, as was done.

96. The Claimant took his Part 1A Finals in June 2008 and received low marks, of 21.5% in organic chemistry, 31% in inorganic chemistry, and 41% in physical chemistry. These results counted towards his degree and Dr Thomas (Senior Chemistry Tutor) had to point out to the Claimant that he would have to average about 45% the next year just to get a degree.

97. It is said in the APOC (as part of the narrative set out) that these exams were taken by the Claimant "without any specific adaptations or support given to him". It is said this was "worsened" by Dr Whitehouse being absent from the College during the week of these exams and the Claimant having been discouraged from maintaining his relationship with Mrs Austin.

98. However, as I have said, a side room was offered and rejected, the Claimant accepted in cross-examination that Dr Whitehouse spoke to him many times over the exam period, and I do not accept there is anything in the point that the Claimant was discouraged from maintaining his relationship with Mrs Austin. That was an external arrangement, and though from contemporaneous e-mails one which the Claimant himself at times did not always seem to appreciate, which was a position Dr Whitehouse was sympathetic to, one which he maintained.

99. On 24 June 2008 Mr Francis Needham e-mailed Dr Thomas saying amongst other things that the Claimant now realized that Dr Knowland's advice to Tom that he sit the exams in a private room, which had been declined, had been right. The e-mail concluded by thanking Dr Thomas and his colleagues for their unstinting support which had sustained the Claimant, adding that the personal tuition provided had been entirely appropriate for him and "most generous".

100. Whether the Claimant got his degree was not, of course, down only to the College, which could not alter matters outside its control.

101. It is noticeable that this e-mail did not contain any friendly suggestion of anything further that could usefully have been done or might be in the future, let alone any criticism of Dr Whitehouse or relating to Angela Austin.

102. I refer to this because, whilst looking back with hindsight from a point where it is now known that the measures put in place did not 'work' in terms of getting the Claimant his degree, it is inevitable that not everything may be considered to have been done

perfectly, such contemporaneous documentation ties in with the fact that the College was doing its best to adapt what was done to the Claimant's particular circumstances for his benefit. It was, in my judgment, not trying in any way to force him out or set up hurdles he could not meet in order to fail, which it would not have been in its interests to do, but was acting reasonably and doing its best to help him so far as it could.

103. The provision of Dr Whitehouse, of Tom Brown - who was then replaced by individual tuition to try to help him further - the deferring of Collections, the sitting of Collections in his own time, without invigilation, and the offer of a side room for exams, as well as asking the University to extend time limits, are all indicative of this. Whilst there has been criticism of the way some things were communicated, the College was in my judgment acting reasonably and doing its best to support Claimant, and to communicate with him and his parents, though understandably not everything was necessarily what he or his parents wanted to hear.

104. An example of this is the meeting held on 10 July 2008 attended by Dr Whitehouse, Dr Gregory and Dr Knowland, and the Claimant and his mother. Although Mrs Needham later complained that the Claimant had been encouraged at the meeting to leave the University and told that he might otherwise do so with nothing, it was accepted at trial, both in opening and in the Claimant's evidence, that it was appropriate for the possibility of him transferring to a less demanding University to be discussed with him, as was done, and his views ascertained. It is apparent that this was so. Following Mrs Needham's subsequent complaint about this discussion, it is understandable that this was not raised again thereafter, but entirely appropriate at this stage, with the background I have set out and the Part 1A exam results as they were, almost six years after he joined the University.

105. Communication with the Claimant was not always easy and his parents found it no more easy at home on occasions but the College also involved his mother for example at the meeting just mentioned, and answered all communications from family members, as well as, in my judgment, providing reasonable support for him.

106. An internal e-mail from Dr Knowland to Dr Whitehouse on 10 July 2008 contained the comment that the Claimant "should never have been admitted of course: he didn't meet the standard conditions but was admitted because of the history of eating disorders/depression", referring to the pressures of being a student at Oxford and having done him a disservice. This was not seen by him at the time, but it is true that the interview requirement for admission had been waived and that the University, its course, and exams necessarily created pressures for all students. Dr Knowland in this frank e-mail emphasised, however, that the College had to do all it could for him.

107. On 19 November 2008 the Claimant e-mailed Dr Whitehouse saying he did not feel entirely at ease with him by reference to past events he had discovered recently, followed by a reference to the fact Mrs Austin had been asked to make contact with Dr Whitehouse only through the Disability Office and that he had accompanied him to the July meeting suggesting that there was nothing to worry about when it had been suggested at the meeting that that he should leave.

108. In my judgment Dr Whitehouse was doing his best to reassure and support the Claimant and acting reasonably notwithstanding that whatever he did it may have been open to criticism in the Claimant's eyes – which, for example, he himself suggesting in advance of the meeting that the Claimant consider a less pressured University may equally have been.

109. As I have said, Mrs Austin was not in a role set out in the SNA and it was never agreed that whatever degree of contact she chose to make she should always have direct access to Dr Whitehouse or anyone else, and going to a less pressured course elsewhere was simply raised as a possibility at the July meeting which it was accepted at trial was something it was appropriate be raised for consideration by the Claimant at that stage.

110. The Claimant e-mailed Dr Knowland about these matters on 24 November 2008. She replied to this, and a subsequent e-mail of 28 November, in very great detail in a letter of 5 December 2008 (comprising almost 6 pages closely typed). It is clear from it that she was conscious of the need to try to get the Claimant to understand the position, and went to some lengths to explain it and to reassure the Claimant, attaching also various documents for the purpose, and setting out a number of steps aimed at assisting him, including making exceptional arrangements for him to keep his room in College over the vacation, investigating a revision tutor, and asking for a meeting the following week, on 10 December. It also annexed a summary of work required and revision tasks designed to help in achieving success in the Collections set for the start of the next term.

111. The Claimant e-mailed on 5 December thanking Dr Knowland for her suggestions, including the offer of further tutorial assistance and accommodation.

112. However, on 9 December the Claimant e-mailed her deferring the meeting, stating he had sought medical advice for physical illness brought on by stress. Further e-mails followed and Dr Knowland repeated her suggestion from the summer exams of the Claimant sitting Collections in a private room to reduce anxiety notwithstanding it had been rejected before.

113. On 14 December 2008 the Claimant wrote to Dr Knowland requesting a deferral of his course, once again, for a year saying he had seen a consultant psychiatrist who had recommended a complete change in his medication. He proposed taking the Part 1B exams in summer 2010. He asked the College to support securing permission for this from the University authorities.

114. On 19 December 2008 Dr Knowland wrote to the Claimant setting out details of what would need to be considered in relation to the request. It also mentioned that Dr Whitehouse (whom she knew confidentially had been applying for posts in Australia) would no longer continue in the role of mentor from the following term and that it would have to be considered whether the College should continue to provide a mentor or whether that should be done directly through the University's Disability

Office, setting a meeting date of 6 January 2009 to discuss whether he would be fit to participate in Collections that term and the best way to proceed. She indicated that if he decided that he did wish to make a formal request for a deferral she would take steps to set up the necessary consultations she had identified. She also set out a number of things to assist, including reference to private tuition the Claimant might obtain whilst away from University, as suggested by him.

115. It could not have been expected at the outset, or at any point, that Dr Whitehouse would necessarily continue as mentor for ever. The Claimant had also said recently that he regarded him with some unease. Everything fell to be discussed at the meeting on 6th January, and it seems wholly unlikely that when the Claimant returned Dr Whitehouse would not have been replaced by someone else, particularly given the SNA which had been the reason for his own appointment. As the Claimant said in his evidence, before identifying a mentor it needs to be known first when the person will return, though.

116. The Claimant did not however attend the meeting on 6 January 2009 and his father wrote to Dr Knowland on 7 January stating “Regrettably the medication prescribed from Dr Orr has not lived up to its early promise”, and he was “in no condition to undertake Collections”.

117. Though the letter also said that tutorial support offered for the vacation “did not materialise” the Claimant accepted in his evidence that it had not been taken up by him.

118. The Claimant not having attended the meeting, on 15 January 2009 Dr Orr wrote to Dr Knowland that “undertaking collections would not be advisable at the moment”. On 29 January the Claimant confirmed he would not be returning that year and on 30th January made a formal application for deferral of his studies at College to the next academic year.

119. Following receipt of further medical information, the Tutorial Committee met and on 16 March 2009 Dr Knowland wrote to the Claimant setting out that his request for deferral of his studies had been granted for return to College in October 2009 and of the University’s Part 1B examination until June 2010. His return to College was conditional (as the Pro-Vice-Chancellor (Education) of the University had required it to be) on him being able to provide evidence that he was fit to undertake the work and sit collections, with an assessment of fitness to study being made by the University’s Occupational Health Physician, a final health check by College doctors immediately prior to the start of term, and Collections being sat on the second year material in mid-September 2009. The normal threshold mark of 60% required for a return to residence was lowered to 55% . The Claimant was reminded of these conditions again in a letter of 26 May.

120. By letter on 29 April 2009 the Claimant agreed to sit Collections though he said they imposed a greater burden “than my condition justifies”. They were not being imposed because of any condition he was in, however, but, rather, were designed to show he had a sufficient understanding of the second year material to progress and this, and

the requirement for medical certification he was fit, were in my judgment reasonable conditions to impose - and there was no suggestion otherwise in March, when they were imposed or in May when the Claimant was reminded of them, and indeed at trial such conditions were accepted to be reasonable ones.

121. There was correspondence about the health assessment during summer, but on 14 September Mrs Needham wrote to the Dean of the College complaining about a number of matters, culminating in her saying there had been "an element of discrimination against Tom as a disabled student". A disability discrimination claim was in fact issued subsequently, in 2011 but this was then withdrawn (and a claim in relation to this in the present action was struck out).

122. On 16 September Mr Needham e-mailed Jane Vicat (now College Welfare Registrar) stating that medical certificate confirmation of the Claimant's fitness to sit Collections would be dealt with and asking for them to be sat on 25 and 28 September. These dates were agreed.

123. On 17 September Dr Knowland e-mailed Francis Needham stating that Dr Ian Brown, the University's Consultant Occupational Health Physician ('OHP'), could see the Claimant to confirm his fitness to sit Collections or could receive a certificate as to that from a doctor who had been treating or seeing the Claimant recently.

124. On 23 September 2009 (7 days after her e-mail of the 16th) Mrs Needham e-mailed Sir Ivor Crewe, the Master of the College, stating that she doubted the Claimant would be fit to sit Collections on 25 or 28 September, suggesting they were unnecessary.

125. In response, Sir Ivor set out in some detail the reason for Collections being necessary, that the Claimant's GP or another doctor could certify he was fit to sit them, with a full medical assessment by the OHP subsequently in relation to fitness to study, and that prior to the Claimant's return to College it would be agreed with the Disability Office what support would be required for his third year.

126. The Claimant failed to sit the Collections.

127. By e-mail of 14 November 2009 Sir Ivor suggested that if the Claimant wanted to, he would recommend to the Education Committee that he return to his studies in October 2010. This would be on the basis of essentially the same conditions, namely that:

(1) There must be confirmation by the Director of Occupational Health, based on his arrangement of a psychiatric examination, that the Claimant was fit to return to undertake his third-year studies, the psychiatric examination to take place two months before his intended return in October 2010;

(2) The Claimant took Collections based on his second-year work shortly before October 2010 and passing the lowered 55% threshold;

(3) There must be confirmation from the Claimant's family doctor a week or so before the event that he was fit to sit Collections.

128. Mrs Needham agreed in reply that the right approach was for the Claimant to apply for re-admission in October 2010 but asked for him to return for the summer term of 2010 and sit Collections that term, that is to say, in June 2010, and asked to defer her complaint of 14 September 2009 until a regime for his return had been agreed or this could not be achieved. Sir Ivor had earlier said the complaint should not drift and on 25 November said it was being progressed to stage 2 of the students Complaints Procedure. Mrs Elizabeth Crawford, Domestic Bursar of the College, who had not been involved in the matters the subject of the complaint, was thereafter appointed to investigate it, and the procedure set out. In a detailed report dated 12 January 2010 Mrs Crawford set out the reasons why there was in her view no valid complaint to be made.

129. On 21 January 2010 Dr Knowland wrote to the Pro-Vice-Chancellor (Education) referring to the previous deferral granted for the Part 1B exam in June 2010 and asking for deferral now of the Claimant's Part 1B exam to June 2011. Deferral of course studies was not a matter solely for the College.

130. The College's Tutorial Committee met on 3 February 2010 and discussed matters relating to students' intermission and conditions for return to residence thereafter. The College's Regulations on Residence were appended to the minutes, which recorded that certain amendments be made, as can be seen from those minutes. Important for the purposes of the present case is that there should be added the following,

> "(vi) The expulsion of a student who fails to meet the conditions for a return into residence after an intermission granted by the College should be subject to an appeal procedure, similar to that applying to a student who has been subject to an academic disciplinary procedure (which provides for a junior member who fails to satisfy a condition imposed as a disciplinary measure by the Tutorial Committee or an Academic Disciplinary committee to appeal against the implementation of the measure, but only on the ground that the failure to meet the condition was excusable, and not on the ground that it should not have been imposed)".

I will refer to the rest of these Regulations, to which this was added, below.

131. On 10 February 2010 the University's Pro-Vice-Chancellor required a report on the Claimant's current state of health, and indications of his likely fitness to study in October 2010 before deciding to allow a further deferment by the University for the Part 1B exams to be taken in June 2011.

132. At that time, according to medical records that have now been produced, the Claimant was in fact "not functioning well", and failing to attend some medical appointments and assessments.

133. In June 2010 the Claimant and his mother obtained a report from Dr Luke Beardon, Senior Lecturer in Autism at Sheffield Hallam University.

134. Dr Beardon's report stated it was written "at the request of Tom Needham in conjunction with Dinah, [his] mother". It was based purely on what he was told by them and was done without any contact with the University or College, but made a series of "support suggestions" based solely on what had been said. There is nothing to suggest Dr Beardon had seen the detailed SNA that had in fact been carried out. He said he was "in no position to comment on past levels of support" and "was not party to what Oxford may be currently offering".

135. Dr Beardon's "suggestions" included such things as communicating generally by e-mail rather than by way of meetings, copying Mrs Needham in, and having 1:1 tutorials, which was already being done.

136. It said "Any assessment of Tom's needs should be undertaken by a professional who has a good understanding of AS", which is what the SNA had in fact done.

137. I interpose at this point that when the University later suggested a further needs assessment be carried out, Mrs Needham resisted this by e-mail on 17 August 2010 on the basis it was unnecessary.

138. Mrs Needham then met Dr Brown together with Ann Poulter on 1 July 2010. Dr Brown discussed the Claimant's preferences as well as other matters and the suggestions in Dr Beardon's report. The reasons for Collections were explained again by Mrs Poulter. As a recording of the meeting by the Claimant or his mother shows, in the course of the meeting the Claimant acknowledged that "Dr Whitehouse was very helpful and nice. He made a big effort to get in touch with me and check in".

139. On 15 July 2010 Dr Brown wrote to the University stating his view that the Claimant was well enough to return, study, and to sit collections.

140. Following this, Dr Knowland wrote to the Claimant on 27 July 2010 stating that the College was waiting to hear from the University if it was willing to allow deferment of his Part 1B exams until June 2011. She set out again that if permitted, the Claimant would need to take Collections on 6 and 7 September, with the lower threshold mark of 55% applying to the results.

141. On 29 July 2010 the Claimant agreed to sit Collections on those dates if required.

142. At the beginning of August the Claimant was asked about his room preferences and encouraged to visit. On 3 August 2010 the University granted the deferral request.

143. Although on 29 July, the 6 -7 September had been agreed by the Claimant as suitable dates for Collections, he asked on 2 August to sit them later in September, at a time similar to that when Collections were generally sat in the previous year, around 18 –

21 September). Dr Knowland wrote to him agreeing to them being sat on 20 and 21 September.

144. Despite this, on 6 September Mrs Needham e-mailed Dr Knowland saying that the driver they were hoping to use was on holiday on 20 and 21 September and asking for the Claimant's Collections to be postponed to 29 – 30 September. Sir Ivor Crewe replied, in Dr Knowland's absence, reminding her that these dates had been agreed at their request, and that alternative transport arrangements would need to be made.

145. Mrs Needham's e-mail of 6 September seems likely to have been a subterfuge as the Claimant had in fact instructed solicitors ('Sinclairs') who on 9 September 2010 wrote to Dr Knowland and Sir Ivor stating that the Claimant was "not in a position to sit collections on 21 September 2010", asking for a waiver altogether of the requirement to sit them, and threatening a disability discrimination claim.

146. On 13 September Mrs Needham herself also wrote to Sir Ivor Crewe requesting waiver of Collections. She referred in the letter to Dr Brown having 'directed' Dr Beardon's recommendations be in place within 28 days of their meeting with him on 1 July. However, whilst Dr Brown had suggested at that meeting that Ann Poulter of the University construct a contract for him and anticipated this being in place within 28 days of the meeting, this was to support the Claimant in relation to his course after he returned to College – which, of course, he had not yet done, but was hoping to do in October - and he had at the same time certified him fit to sit Collections in September with a view to resuming the course after that. This did not obviate the requirement to sit Collections, the reasons for which had been explained many times, which it had been agreed would be sat, including as recently as 2nd August (on revised dates sought by the Claimant himself), and which it is accepted at trial was a reasonable requirement.

147. Ann Poulter of the University's Disability Advisory Service had in fact sent a draft support agreement to Mrs Needham on 1 September 2010 (apologising for the delay for logistical reasons she explained).

148. In response to what was now solicitors' correspondence (by Sinclairs) on behalf of the Claimant, the College itself instructed solicitors ('Farrers'). They replied to Sinclairs on 16 September 2010, stating that the Claimant could delay Collections until 27 and 28 September 2010 but no longer. They pointed out that if he did not pass despite the lowered pass mark, he would be able to raise mitigating factors, but that if Collections were not then sat it would be too late to meet the conditions for his return for the academic year 2010-11.

149. Sinclairs agreed on 16 September that the Claimant would sit Collections on the new 27 and 28 September dates, and said they would write to the University about the study support agreement (which they did on 17 September, suggesting amendments).

150. Dr Brown had a telephone discussion with Mrs Needham, which he followed up on 17 September 2010, emphasising in relation to Collections that "It would be unfair on

Tom to allow him to embark on his further studies without ensuring that he has the requisite background knowledge to build upon and that the College have a duty of care to ensure that he is fit to continue".

151. However, on 20 September 2010, only 4 days after they had agreed the 27 and 28 September dates for Collections, Sinclairs wrote that they had "new instructions" that the Claimant was not "medically fit" to sit them as he was "suffering from extreme anxiety".

152. Farrers replied stating that if the Claimant did not sit the Collections on 27 and 28 September, the conditions for return would not be met and he would not be readmitted for the academic year 2010-11.

153. Sinclairs on 22 September, and Mrs Needham herself on 24 September, wrote to Farrers asking again for the Claimant to return without sitting Collections.

154. Farrers replied that this was not possible, but that the College would allow him to take the exams at home, which would avoid both any logistical problems and the stress of the journey, with the Dean travelling to Derbyshire to invigilate. However, this was rejected, with Sinclairs saying he would find it embarrassing. No alternative proposals for sitting them, of any description, were put forward, and no assistance was suggested as of value.

155. The College's Tutorial Committee at its meeting on 6 October 2010 found, inevitably, that the Claimant had not met the academic condition for his return.

156. Farrers advised, however, that he could appeal, limited to whether the failure to meet the condition was excusable, which was in line with the Tutorial Committee's decision on 3 February 2010 to amend the Regulations to allow this, and the amendment made in consequence as set out in the Residence section of the 2010-11 version of the College Handbook. It was an amendment in the student's favour.

157. The Claimant did so, with grounds of appeal being drafted, in conjunction with Sinclairs, he said in evidence.

158. The Appeal Panel was chaired by Professor Roscoe. The Claimant had an opportunity to participate, in person or remotely, but chose not to do so. His mother was allowed to present his case.

159. The first page of the bundle of documents provided for the hearing referred to the "Academic Disciplinary Committee" Appeal Hearing. However, whilst this was unfortunate the Claimant said in evidence that he thought this was an administrative error and he did not dispute that this was because a new appeals procedure was being followed that normally applied to academic misconduct.

160. Whilst references to 'disciplinary' and 'academic disciplinary committee' both there and in correspondence were in my judgment very unfortunate, albeit resulting from

the fact that the return to residence appeals process had only just been introduced and ‘borrowed’ the position in relation to appeals that was set out in the disciplinary section of the Regulations.

161. As Mrs Needham said on 21 January 2011, the Residence section of the College Handbook could and should have been attached to the letter from Farrers dated 8 October 2010, which simply attached Appendix E of it which set out the position in relation to disciplinary appeals. However, they sent a copy of the Residence section of the Handbook with their e-mailed letter of 24 November 2010 to Sinclairs (prior to the appeal hearing), in which it was made clear that the Residence section was the applicable one although (as decided by the Tutorial Committee’s amendment decision) the appeal provision was the same as that set out in paragraph 3(c) of the separate disciplinary procedure at Appendix E, Part I, effectively being borrowed from it.

162. It is clear that it was a failure to satisfy the return to residence conditions following intermission and an appeal in relation to that, that was involved, as set out in the Residence section of the College Handbook 2010-11 (in line with the earlier amendment decision of the Tutorial Committee). I shall refer to this to further in due course.

163. The Appeal Panel considered it hard to imagine how anxiety could be removed from the course, regardless of how much support was given, and concluded that, without adequate treatment to reduce anxiety, there may be no realistic prospect of future studies proceeding smoothly.

164. The Appeal Panel (despite noting the appeal was limited to the question of whether the failure to satisfy a condition was excusable, and not against the condition itself) concluded that, despite representations to the contrary, Collections were appropriate and pointed out that exams with pass marks were an intrinsic part of academic study, and proof of ability to cope with and benefit from further study was important and there was no suitable alternative. It also pointed out that satisfactory written examinations were required by the University required in order to achieve a degree.

165. The Appeal Panel concluded that the Claimant’s excuses for not sitting the September Collections were “vague and unconvincing” (which is a conclusion that in my judgment was well founded in view of the correspondence).

166. It also concluded that there was no evidence that the College’s support for the Claimant had been less than exemplary, but there were limits to what was feasible and reasonable.

167. Nevertheless, because it accepted the Claimant had not been in a fit mental state at the end of September to sit the Collections his appeal was allowed to the extent that he should be permitted a final period of intermission and allowed to return so long as:

The following steps were satisfied and not significantly delayed:

A. The University agreed;

B. An agreement was urgently reached between the Needhams, the University and the College regarding support arrangements (which if not agreed would, it was emphasised, mean it was not possible for the Claimant to return to College);

C. A full psychiatric examination was carried out and it certified that there was a realistically good prospect the Claimant would be able to complete his studies in two years;

If any of the above steps were not satisfied, or were significantly delayed it recommended that the Claimant's studies would necessarily be at an end.

If those steps were satisfied, then:

D. The Claimant must satisfy a fitness to study assessment prior to:

E. The Claimant being allowed to return into residence for one month before specified dates for Collections, with a 55% mark being achieved in each paper); but

F. If the Collections were to be taken at a significant interval before October 2011, the College should have the right to request a further fitness to study assessment before the Claimant then resumed his course.

However,

G. "there must be a limit on how long a degree course can reasonably be extended to have useful pedagogic value, and ....[the Claimant] is getting close to that limit. Indeed, some might say that this has already been exceeded. Therefore we believe that no further delays to the schedule implied by the above (completing Part 2 in TT 2013) should be allowed, and that, if such a delay is requested, we would expect that the College should regard it as a withdrawal".

H. Tom and his parents must formally indicate their acceptance of these conditions.

168. This made clear that it was a final decision, the appeal process having been exhausted.

169. On 1 December 2010 the College's governing body endorsed the Appeal Panel's decision, as notified to Mrs Needham the following day.

170. On 21 January 2010 the Claimant, through his mother, appealed the Appeal Panel's decision to the Conference of Colleges Appeal Tribunal ('CCAT').

171. CCAT considered it had no jurisdiction as this was not a disciplinary matter, but nevertheless concluded that the conditions were reasonable and "entirely necessary",

save that it suggested the Claimant's parents' acceptance of the Appeal Panel's decision conditions should not be required in addition to his own.

172. By a letter from Farrers on 19 April 2011 it was specified that the time for Collections was to be the week commencing 18 July 2011, though it was said that they must have been sat by Friday 12 August 2011 at the latest.

173. Mrs Needham accepted the Appeal Panel's conditions on the Claimant's behalf on 27 April 2011.

174. On 12 May 2011 the University by letter sent on behalf of the Pro-Vice-Chancellor granted permission for the Claimant not to sit the second and third year exams consecutively. However, it was noted by the Pro-Vice-Chancellor that this was the ninth year since the Claimant's matriculation, referred to "significant academic questions that have to be addressed" in relation to the College's request for dispensation permitting Part 1B examination of the Claimant for his degree in 2012, on top of previous deferrals in 2009 and 2010, and that the College was to satisfy itself that the Claimant would enter the third year of the course with comparable knowledge to those who had just finished the second year. It also set out how there was a new Part 1B course, and that it would not be practicable for the chemistry department to teach the old Part 1B course alongside the new Part 1B course, although it could for 2011-12 make arrangements for students who took the old Part 1A course to undertake the new Part 1B course using a scaling process to align the old Part 1A marks and the new Part 1B marks.

175. It is to be noted that these were observations of the Pro-Vice-Chancellor of the University itself, which is not a party to the present proceedings, but was the entity ultimately responsible for the award of degrees and it seems unlikely in the light of them that any subsequent dispensation allowing extension to 2013 or beyond would have been granted.

176. As part of the Appeal Panel's decision, the Claimant was required to be certified fit to study. It was for him to meet the conditions that had been agreed. However, the College itself went to considerable efforts to arrange an assessment by a suitable psychiatrist, none of which was successful.

177. Sinclairs had ceased to act for the Claimant and he had instructed new solicitors ('Bailey Wright'), to whom Farrers wrote on 16 May, giving details of two psychiatrists, Dr Pearce and Dr Robertson, who could assess the Claimant. On 18 May the Claimant said he could see either psychiatrist but requested an appointment near to his home, such as in Sheffield or Birmingham.

178. An appointment with one of them, Dr Pearce, was arranged for 17 June 2011 in Sheffield. Mrs Needham called Dr Pearce's secretary and emailed a number of times querying what was to be done at the assessment, which she also asked, through solicitors, to tape record. The appointment was cancelled by Dr Pearce in an e-mail to Mrs Needham on 16 June on the basis that the family appeared to be unhappy with

the proposed assessment.

179. Dr Robertson was unfortunately unable to see the Claimant other than in Kent, where he was based, but an appointment was offered for 5 July 2011 with the College offering to pay for travel and accommodation, and giving various options for how this could be managed, offering as one of them accommodation in College, as a place familiar to him, to break up the journey. However, despite the importance of the assessment, the Claimant's solicitors refused the appointment on his behalf on the basis it was too far to travel.

180. The College then secured an appointment with Prof Brugha in Leicester on 6 July 2011. Sinclairs said on 30 June he was willing in principle to attend, but raised "points of concern" in relation to the assessment. These were answered by the College's solicitors the same day, but at 3.05pm on the 5 July, the day before the assessment was due to take place, Sinclairs e-mailed Farrers stating the Claimant's father "suffers from severe ulcerative colitis", as shown by, letters attached, and that the Claimant was "too upset over his Father's condition to attend the assessment tomorrow" and that Mrs Needham was also unable to do so. Farrers the same day pointed out that Prof Brugha had gone out of his way to make room to see the Claimant at short notice, raised specific questions about why the assessment could not go ahead, which essentially went unanswered.

181. Farrers wrote to Sinclairs on 11 July pointing out that as the Claimant had said he wanted to be in residence at least a month before he sat Collections (ie by 10 July 2022), the psychiatric assessment and fitness to study assessment needed to take place before 10 July 2011, reminding them of the Appeal Panel's ruling that "If any of the above steps fail to be satisfied or are significantly delayed, we regretfully recommend that Tom's studies at [College] are necessarily at an end". This meant the Claimant could no longer be declared fit in time to return to College for a month before the agreed Collections.

182. In the meantime, the University had sent a revised draft of the Study Support Agreement to the Claimant for signature on 20 June 2011 but it had not been received back (and despite chasing by the university was only sent back by Mrs Needham, with suggested amendment, on 16 August 2011).

183. The final date on which the Claimant was required to have sat his Collections under the Appeal Panel's decision was 12 August 2011 (as set out, for example, in a letter from Farrers to Mrs Needham on 20 April 2011). Farrers on 19 July reminded Sinclairs again of the Appeal Panel's decision. Following further correspondence, on 27 July Farrers made clear the Claimant needed to sit the Collections as agreed on 11 and 12 August and could do so at home or in a suitable location nearby such as a hotel meeting room, and that the College would if necessary provide a nurse to look after the Claimant's father, with a simple GP's assessment of fitness to study in order for Collections to take place, with the psychiatric assessment with Prof Brugha taking place either on 10 August or following them in the week commencing 12 September.

184. This in my judgment shows the College was, now through solicitors corresponding with the Claimant's second set of solicitors, going to considerable lengths to try to enable the Claimant to meet, and to ensure he met, the agreed, conditions.

185. By 29 July 2011 Bailey Wright were no longer instructed and Mrs Needham wrote to Farrers saying the Claimant was not willing to take the Collections at home or in a hotel and on 3rd August wrote saying he was unable to attend the assessment with Prof Brugha on 10 August 2011.

186. On 4 August 2011 the College's solicitors advised that the Claimant would need to sit the Collections, that they had made provisional bookings at two hotels close to his home, and they offered a further alternative of the Claimant sitting them at the Buxton campus of the University of Derby, where they had made enquiries and found a meeting room that was available there.

187. However, on 5 August 2011 Mrs Needham stated that it was doubtful that the Claimant was well enough to sit Collections by 12 August 2011 and set out conditions which would mean taking the exams in 2012, so further deferring his recommencement of his course for another year, beyond what the Appeal panel had found possible for reasons they had set out.

188. I do not accept that the venues put forward were unreasonable, and the Claimant made no suggestions as to how he could meet the agreed conditions by for example sitting the required Collections elsewhere.

189. The Claimant was also unable to say in evidence why the University of Derby was not acceptable as a venue, where would have been acceptable, or what more the college could have done.

190. By letters on 5 August 2011, Farrers emphasised that the Claimant had to pass a fitness to study assessment (step D in the Appeal Panel's decision) and sit Collections on 11 and 12 August 2011 (as set out previously), and that unless he agreed to take the necessary steps by 5pm that day, his studies would be at an end

191. On 9 August, there was reference in a family GP's letter to the Claimant being "currently under our care and review with Asperger's syndrome, anxiety, and bulimia and a current dental infection awaiting surgical intervention" and an (incorrect) "understanding [he] has been given at short notice a requirement by the University to attend for an update review and examinations", which he reported as worsening his anxiety, and the next day Mrs Needham e-mailed Farrers saying he had had an "emergency dental operation" and was due to have canal root treatment on 10 August.

192. Farrers wrote on 15 August pointing out, amongst other things, that the Claimant would not now have time to spend time in College prior to Collections and saying that "As you know, the original deadline of 12 August for Collections was based on there then being time for the Collections to be marked, for any necessary appeal to take place (if required) and then for a period of acclimatisation before the start of the new

academic year". They set out a revised timeline based on him agreeing to sit the Collections on 30 and 31 August, allowing time for them to be marked and to a "truncated appeals process".

193. The schedule attached referred to the fact that the Claimant "must be in a position to engage from the very start of Michaelmas Term 2011 with tutorial and university teaching for Part 1B, and with all practicals". It referred to the sitting of Collections and achieving the 55% mark in each paper as the "academic conditions", and went on to refer to the marking process and said that, "If Tom has met the *requisite standard*" the Tutorial Committee, Governing Body and University would be asked to confirm the Claimant could return. However, it said that "if…it is *not clear* that Tom has met the conditions, a special meeting of the Tutorial Committee must be convened…to confirm whether or not Tom has met the academic conditions", and that, if it decided not, "then normally the College's Regulations provide for an appeal, with him having three days under the Regulations to decide whether to appeal". It proposed a truncated process. However, the emphasis is mine, and it is clear to me from the letter and the schedule read as a whole, together with the surrounding correspondence, that this related to the question of whether the Claimant had met the required standard in Collections he had sat; in other words, a matter relating to the *academic results* of exams sat, which if the standard achieved was disputed it was felt might be open to final determination by the Tutorial Committee and on an appeal from it.

194. The letter was, it seems to me, proceeding on that basis, nothing having been said by the Appeal Panel as to how any dispute as to whether the academic requirements of the Appeal Panel had in substance been met was to be determined. The Claimant might be able thereby to show for example that, having regard to the marks awarded and any special factors which might skew them, that he had achieved the equivalent of the required academic standard of 55% necessary to enable him to continue with the third year of the course in October 2011. In other words that, as a matter of substance, he had met this part of the requirements. However, if he failed to sit Collections at all then that was effectively a withdrawal under the Appeal Panel's determination because he necessarily would not be able to continue, as there would be nothing whatever to indicate that he had sufficient learning to proceed to Part 1B of the course; no doubt whatever that he had not met the requirements of the Appeal Panel; and nothing needing to be adjudicated on by anyone. It would not be "not clear" that he had met what (in substance) was required, as Farrer's letter put it, but certain that he had not done so. A failure to take the Collections at all would necessarily mean the end of the ability to re-start the course starting in October 2011, and therefore to do so at all, given the loss of pedagogic value in the course by reason of delay, and would fall under the Appeal Panel's decision to be treated as a withdrawal.

195. I do not consider the letter and Schedule were intended to give, or refer to, a right of appeal against the end of the Claimant's studies as decided by the Appeal Panel for failure to actually sit Collections under its ruling, which would be contrary to all the other correspondence making clear that if Collections were not sat the Claimant's studies would necessarily and finally be at an end because of the Appeal Panel's

decision.

196. On 17 August Farrer's said the Claimant would need to agree to sitting Collections on 30 and 31 August, to which the appeal process offered would apply, by 5pm on 19 August or the College would have to confirm the Claimant's studies were at an end. This was repeated on 19 August.

197. The Claimant did not do so.

198. On 25 August, by letters to Mrs Needham (from Farrers) and to the Claimant directly (from the Master) the Claimant's studies and membership of the College were confirmed to be at an end

199. In my judgment, the sitting of Collections was reasonably required, for reasons I have given, which were explained fully on many occasions, was agreed numerous times, and is accepted in the litigation to have been a reasonable requirement. The time notified for sitting them, despite being agreed on numerous occasions, was not met. The medical conditions were also necessary and reasonable, but despite reasonable, and indeed strenuous, attempts by the College to arrange a suitable psychiatric appointment, this was effectively declined. No fitness to study assessment from the Claimant's GP was received. The University (separate to the College) also required that the Claimant be up to standard for his third year. The Claimant had had reasonable support but had to work despite his problems in order to get suitable marks, the threshold for which was lowered by way of further accommodation, and to face the exams. An appeal could be made if he did not meet the precise 55% mark, to show that taking particular factors into account the marks he had obtained nonetheless showed he was at a sufficient standard of learning to continue. However, the Claimant failed to sit the Collections through no fault of the College. He similarly failed to meet the separate requirement of the Appeal Panel of demonstrating medical fitness to proceed.

200. In considering this matter, I have, of course, carefully taken into account the evidence of Mr John Hall, the psychologist called as an expert witness for the Claimant. He made clear in his evidence that autism is not a medical condition or disorder of mental health, but a "pattern of neurological differences". However, his evidence was that a large number of autistic people also have a mental health condition such as anxiety, depression or OCD. He accepted in his report that the College had not dismissed the Claimant's autism but said they did not see it as central to his difficulties based on the fact they had "marginalized" Angela Austin (whom he referred to as having been "summarily dismissed"), 'ignored' Dr Beardon's report, 'refused' help from Dr Bailey's team, and 'insisted' the 'way to make sense' of his difficulties 'and resolve' lay almost exclusively with medical intervention.

201. Having had the advantage of hearing all the witnesses and considering the contemporaneous documents, I do not agree with this criticism of the College. The Claimant was supported to a reasonable degree in relation to his needs as a person with autism, but the College was not a medical or mental health institution and the

resolution of his mental health difficulties were addressed by a series of appropriate medical practitioners, including consultant psychiatrists. Angela Austin was a person separately involved by the Claimant's parents as a 'human givens' therapist ("human givens" being something Mr Hall said in oral evidence he "had never looked deeply into"), was not in a role identified in the SNA and was not inappropriately dealt with by the College. Dr Beardon had limited information, no contact with the College or University, and did not even know the contents of the existing SNA, but his report was considered by Dr Brown and a support contract was to be drawn up for when the Claimant returned. In relation to his needs, a further detailed SNA was proposed by the University but resisted by Mrs Needham on the Claimant's behalf. It is not apposite to say that help from Dr Bailey's team was refused. Rather, a judgment was made that Dr Whitehouse should be appointed not Dr Wittermeyer, he being a suitable person for the role, as I have said. The descriptions and criticisms of the College by Mr Hall to which I have referred are, on the evidence, in my judgment not justified. I also do not agree that the Claimant's support should have been delegated to an external agency in the sense that it was unreasonable to provide it in the College of which he was a member and which knew him and was responsible for his learning and academic progress. I reject the view expressed in his report that "the College very badly mismanaged the situation for more than 5 years", or at all.

202. Separately, Mr Hall said in his report it was important to ask why the College did not realise the Claimant was in need of a special needs assessment much earlier than 2006, when the possibility that he might be autistic was first mooted by a consultant psychiatrist. Numerous doctors, and more particularly consultant psychiatrists were involved in assessing and helping the Claimant and none of them suggested an assessment on the basis of possible autism until late 2006. That the College should have identified this earlier was not something relied on in the Claimant's case and this implied criticism of it was in my judgment unjustified.

203. Mr Hall also had criticisms to make of the experience and approach of Dr Knowland, Dr Gregory and Dr Whitehouse, though none of Angela Austin, whose level of contact with Dr Whitehouse does not appear to have been considered. I reject suggestions they were incapable of properly understanding what was required or providing it. The College, on the evidence, provided reasonable support, guided by professional assessments of the Claimant and his needs.

204. I do not accept the criticisms made of the College in Mr Hall's report. He appeared keen in his evidence to support the Needham family, which in a sense is laudable, but not the most objective approach.

205. All this is aside, of course, from the fact that any breach of contract by the College prior to 22 August 2011 is accepted by the Claimant to be statute-barred in any event.

206. It is to the alleged breaches post 21 August 2011 on which the Claimant's case actually relies to which I now turn. I have nonetheless considered it important to set out the history of events during the Claimant's time at College in looking at what followed. I have also considered it appropriate to make independent findings in

relation to criticisms made, in fairness to the Claimant and the College given the full ventilation of these matters at trial and their importance to the parties. I hope the Claimant will understand that I have made an independent judgment on the evidence, which I can understand it was important for him to obtain.

<u>The Claimant's Case</u>

207. It is important to emphasise that:

(1) the Claimant's claim is solely one in contract;

(2) the Claimant's studies at, and membership, of the College were terminated on 25 August 2011 and the claim is only for breach of contract occurring after 21 August 2011 onwards (22 August 2011 being the date six years before the issue of the claim form on 22 August 2017).

208. These matters were expressly confirmed by the Claimant's counsel in both opening and closing submissions.

209. Though implicit in the above, it is also to be noted that it is not a claim for disability discrimination. Such a claim (the primary limitation period for which is 6 months) was brought by the Claimant in the county court in March 2011 and withdrawn in October 2011. A claim for disability discrimination in the present action was previously struck out.

210. By the Amended Particulars of Claim ('APOC'), it is alleged that implied into the contract with the College for the provision of tertiary education services, as an enforceable term, "was the manner in which the College would address issues of academic performance and disciplinary sanctions in respect of the Claimant. In particular, the Regulations of the College amounted to an enforceable term of the contract between the parties".

211. What is alleged in terms of breach, in paragraph 75, is that,

> "The College breached the term of the Contract when it wrongly failed to follow the procedure set out in the Academic Regulations by terminating the Claimant's studies and membership of the College without affording him an opportunity to first:
>
> (i) Have a meeting with the senior tutor, other relevant tutors and another member of the tutorial committee (paras 2a and 2b);
>
> (ii) Have an opportunity to appeal before it is imposed after that meeting occurred (para 3a);
>
> (iii) Have clear notice of the hearing and grounds for measure (para 5)".

212. The regulations relied on by the Claimant, are the “Academic and Other Disciplinary Procedures” contained in Appendix E, of the College’s Handbook of Information and Regulations 2010-containing the paragraphs referred to in Part I (“Disciplinary Measures on Academic Grounds”), which I will refer to as ‘the Academic Regulations’, using the terminology both parties have adopted.

213. In addition, paragraph 76 of the APOC alleges that the contract contained an implied term pursuant to s13 of the Supply of Goods and Services Act 1982 that the College’s services would be provided with reasonable care and skill.

214. The ‘services’ - which are in the APOC referred to as ‘services’ in inverted commas - are there alleged to have included:

(i) The process of deciding on and imposing conditions for the Claimant’s re-entry to College;

(ii) The facilities to be provided to the Claimant to meet the needs arising from his disability and/or health condition to enable him to access the Course and/or meet the academic requirements of the Course;

(iii) The manner in which regulations were applied to him as a disabled student;

(iv) The process of considering and deciding the appropriate sanction or other steps to take on non-compliance with conditions imposed on his re-entry to College.

215. Paragraph 77 of the Amended Particulars of Claim “submits that the College did not provide these ‘services’ with reasonable care and skill thus breaching the terms of the implied contract” [sic]. In particular, it is said:

“(i) There was a systematic failure up to the point of the 25 August 2011 when the Claimant’s studies were terminated to provide all of the needs [sic] set out in the SNA dated 6 March 2007.

(ii) There was a failure and/or refusal to adhere to the agreement reached at the meeting with Dr Brown and Mrs Poulter on 1 July 2010 at all times up to the point of 25 August 2011 when the Claimant’s studies were terminated.

(iii) The conditions imposed on the claimant’s re-entry to College had been formulated without consultation with him, Dr Brown (who had already determined his fitness to study based on a contract of support), Dr Beardon (who had most recently done an assessment on the Claimant) or Mrs Austin.

(iv) The Academic Regulations had not been applied correctly.

(v) A decision was made on 25 August 2011 to terminate the Claimant’s studies without having regard to the Claimant’s very good reasons for not being able to sit re-entry collections that month or to explore with him a transfer to an alternative

University since it was first raised at a meeting over three years earlier on 10 July 2008".

216. It is necessary to re-state, however, that it was accepted on behalf of the Claimant, through counsel, in his opening at the start of the trial, that "anything that happened as a breach prior to August 2011 cannot itself justify a claim for damages" (equally applicable to any other relief), and that was not being contended for in the action.

217. The Claimant's present counsel accepted this in his written closing submissions and the way he put it was that matters prior to August 2011 were, "a crucial part of the factual matrix", with the decision to expel him in August 2011 being taken in full knowledge of the Claimant's circumstances and the long history of lack of support and the College was "dealing with the Claimant as he was in August 2011 affected by that history and the College's treatment of him".

218. It is also important to note the following;

(1) Although there was in the papers a dispute about the extent to which the Claimant was encouraged to leave, or consider leaving, his studies at the College at the meeting in July 2011 it was agreed on the Claimant's behalf at trial that this was in fact an option which needed to be discussed at that point, that the College was not 'negligent' (ie in breach of duty) in doing so, and the court need not make any finding of fact as to the extent of this;

(2) The Claimant having been permitted to go 'out of residence', ie leave the College, in 2009, as previously, on the basis he would return subject to conditions that he was medically fit and took an examination (ie Collections) to demonstrate he was capable of pursuing the academic demands of his undergraduate course, was also agreed on the Claimant's behalf not to be in any way 'negligent', ie in breach of duty. Those were accepted by counsel to be standard conditions.

<u>The Defendant's Case</u>

219. The Defendant's case is that the Academic Regulations relied on by the Claimant did not apply to his situation. The Claimant was not subject to academic disciplinary procedures, but was out of residence - that is to say, 'intermitting', to use the term used in the Student Handbook - and seeking to return, which was a different matter, in relation to which the procedure set out in the 'Residence' section of the Handbook applied.

220. Though in relation to not meeting the conditions set for an intermitting student's return the Claimant was allowed to make an appeal, the procedure for which was borrowed from the Academic Regulations, that did not mean, the College says, that the other parts of those Regulations applied. The procedure set out in the handbook as applicable to students seeking to return after intermission is said to have been followed and there was therefore no breach of contract as alleged in relation to that.

221. Furthermore, the College contends that termination unless specified conditions were complied with had already been decided by an appeal committee and the relevant procedure did not provide for any further appeal following non-compliance with the appeal committee's conditions, though if they did the Claimant failed to exercise it.

222. The College accepts it was an implied term of the contract that it would provide its educational services with reasonable care and skill and says that it took reasonable case and skill in meeting the Claimant's needs, having regard to the contents of the SNA.

223. It also points out, however, that alleged breaches of any implied term occurring before 22 August 2011 are, however, statute barred in any event. As I have said, this is accepted by the Claimant.

Discussion and Decision on Breaches of Contract Contended for

224. I have set out the background, or, as the Claimant's present counsel put it, the factual matrix, relating to the decision that the Claimant's degree course studies had to be regarded as at an end, in considerable detail above.

225. I have set out in the course of it, the basis on which I have rejected particular criticisms which were raised in evidence, and, more generally, I do not find the College acted unreasonably in any way in the provision of its services in relation to the Claimant up to him leaving it.

226. It may be considered that the College did not act perfectly in every instance judged by hindsight, as trawled over during an 18 day trial, but the standard is one of reasonableness in the situation that existed at the time, and I am satisfied it was met. This is aside from the fact that any breaches prior to 22 August 2011 would not in themselves be actionable because they would be outside the limitation period.

227. It may be asked why then ultimately the Claimant was unable to achieve the degree he aimed at achieving.

228. The reality of the situation appears to me to be that the Claimant, because of his problems/nature, as opposed to any lack of proper support, simply could not face the necessary examinations in order to move forward. The looming approach of them and the stress of facing them were a distraction from, or disabler of, study. This in turn no doubt added further to the fear of sitting them and not getting a good mark, increasing the stress and the problems, including such things as anorexia.

229. This is not based on an individual incident looked at in isolation but on the entirety of the history and evidence presented at trial.

230. At school, the Claimant had had to sit his 'A' levels individually in three separate periods, but he was now at a top University undertaking a MChem degree in an environment that necessarily involved a series of examinations which had to be faced

when they arose, including the internal College examinations. The course he had chosen, and the University he had chosen (which was an institution separate to the College) did not permit a degree to be achieved on any other basis.

231. The Claimant declined to look at less pressured universities and courses, possibly based more on coursework, but could not avoid the fact that in order to attain the MChem degree he had chosen a student had to be medically fit to study for and sit exams, which was unable to be achieved, with numerous deferrals of both reasonably required Collections, the course itself, and the necessary University exams, over a period in all of nine years.

232. I was very impressed by the way Mrs Needham in her oral evidence said that she would have been happy if the Claimant had wanted to become a bus driver and all she wanted was for him to be happy. I have no doubt this was a genuine expression of her view, and a very sensible one for any parent to hold. However, I do at the same time think that she believed, whether crystallising the thought herself or not, that the Claimant – who had been set on Eton via prep at King's College School, Cambridge and then on University at Oxford - pushing his parents for this, rather than the other way round – would not be happy if he was not able to fulfil his aim of achieving the chosen MChem degree at Oxford. Her desire to do all she could to enable him to achieve that, by all her interactions with the University and College, was the result of that. However, it did not, as has become apparent to me, mean that, even with tailored and reasonable degrees of support, he could do so.

233. The history of events and what was done, and the reasonable steps taken by the College, have satisfied me that it was not its fault that he could not do so, notwithstanding his high degree of intelligence, and indeed, from the way he gave evidence in the trial, his likeability.

234. Mrs Needham's criticisms of the College from time to time were in my judgment the result of not everything she wanted being done and the frustrations of the situation, but do not alter the fact that reasonable, if not perfect, steps were taken by it.

235. The Claimant's case is that the regulations set out in the 2010-11 College Handbook had contractual effect and that the relevant part of them was the Academic Policy.

236. Both the Claimant and the College agree the regulations, or rules, set out in the Handbook had contractual effect.

237. However, in my judgment the Academic Regulations relied on did not apply to the situation which arose in this case.

238. That situation was covered by the 'Residence' section of the College Handbook (or "Residence Regulations", as they have been described).

239. This (in both its 2009-10 and 2010-11 forms) provided that,

> “A student, whether undergraduate or graduate, may go ‘out of residence’ for a limited period, either voluntarily for good reason with the permission of the College (such suspension of status typically occurs for reasons of illness or disability, but occasionally also on compassionate grounds), or compulsorily because of either academic or disciplinary problems. The former is usually referred to as a period of intermission, and the latter situation is sometimes referred to as ‘rustication’. [For further explanation see Appendix E ‘Disciplinary Procedures’]. A period ‘out of residence’ is equivalent to temporary suspension of a course.”

240. The Claimant was clearly in 2010 and 2011 an ‘intermitting’ student, having, as in previous years, sought, and been granted, permission to defer his studies at the College by going out of residence due to ill health. This was accepted by both the Claimant’s counsel in opening, and in the Claimant’s own evidence to the court, and is indisputable.

241. This contrasts with the position of a student required to leave because of disciplinary problems. The ‘Academic and Disciplinary Procedures’ set out in Appendix E to the Handbook (including Part I , containing paragraphs 2(a) and (b) and 3(a) relied on by the Claimant) plainly applied to such students.

242. In the 2009-10 academic year the ‘Residence’ section of the Handbook specifically provided in relation to a return to College (with additions made for the academic year 2010-11 noted by me in square brackets) that,

> ”….only in exceptional circumstances will a student be permitted to intermit for more than a year….
>
> Students returning into residence will normally be subject to medical and/or academic conditions, as appropriate. ‘Fitness to study’ assessments are typically caried out by the College doctors in consultation with the student’s consultant or other medical practitioners. The College requires that students returning into residence bring a letter from their Consultant or GP to a consultation with the College’s medical practice at 19 Beaumont Street [Here, I interpose to say that for the 2010-11 year there was added “(or occasionally the Occupational Health Office)”] three months before they propose to return to College, so that their readiness to return may be assessed. The College practice then advises the college as to the student’s fitness, subject to a further assessment at the beginning of the term and further consultation with the medical staff who have been treating the student. Students in this category are also usually required to sit collections to a satisfactory level prior to their return, the subjects of which, and the standard to be achieved, will be communicated to the student well in advance. Arrangements for collections will be confirmed once the College has approved the student’s fitness to study.
>
> Any such conditions will be notified at the time to the person in writing by the

Senior Tutor or other designated Academic [For the 2010-11 year, "College"] Officer".

243. It was clear from this (in both the 2009-10 and 2010-11 versions) that a student who was intermitting due to illness would be required to comply with conditions prior to their return which usually involved sitting Collections as well as providing appropriate medical evidence of fitness to return.

244. This was not the same as deciding on applying a disciplinary measure. With such a measure (governed by Appendix E to the Handbook), there could be an immediate sanction imposed, including expulsion, or conditions, with a range of possible options, none of which were prescribed or to be regarded as "usual" for the obvious reason that it would depend on the disciplinary matter that fell to be dealt with.

245. The Residence section of the Handbook I have quoted in paragraphs 239 and 242 above was separate to the Academic Regulations as they were dealing with a different situation, which was that of a student intermitting due to ill health.

246. This did not involve taking disciplinary measures, but was concerned with ensuring a student who wanted to return was fit to study and able academically to continue with his course in order to achieve a degree. It was not in the student's interests, any more than that of the College, for them to return otherwise.

247. The section I have quoted did not contain any provision for an appeal. It was decided, however, in 2010 that a student in the position of the Claimant should have an ability to appeal in relation to non-satisfaction of the standard return to residence conditions in a similar way that a student subject to disciplinary measures could do so. As Sir Ivor Crewe said in evidence, it seemed only fair that this should be so.

248. On 3 February 2010 the Tutorial Committee met and decided to amend the Residence section of the Handbook, described as 'the College's Regulations on Residence', by allowing for such an appeal to be made. This was adding something to the student's advantage in that no such appeal had previously been provided in these Residence Regulations.

249. The 2010-11 Handbook was amended accordingly. As amended, the relevant part of the Handbook then had added to it, after the part I have quoted in paragraph 242 above,

> "The expulsion of a student who fails to meet the conditions for a return into residence after an intermission granted by the College is subject to an appeal procedure, similar to that applying to a student who has been subject to an academic discipline procedure (which provides for a junior member who fails to satisfy a condition imposed as a disciplinary measure by the Tutorial Committee or an academic Disciplinary Committee to appeal against the implementation of the measure, but only on the ground that the failure to meet the condition was excusable and not on the ground that it should not have been imposed)".

That was a reference to an appeal in paragraph 3(c) of the Academic and Disciplinary Regulations, which could only be made on this ground, not to part 3(a) relied on here by the Claimant.

250. This did not mean the Academic Regulations themselves applied, however - any more than they had done so hitherto. The fact there was previously no appeal mechanism provided for under them, in contrast to the provision made in the separate Academic Regulations, was what led to their amendment. It meant that though not subject to the disciplinary procedure set out in the Academic Regulations, the Claimant was, under the return from residence provisions of the Residence Regulations, being given a right to appeal to an Appeal Panel on the grounds that the failure to satisfy the return to residence conditions set down under them was excusable.

251. There was no right of appeal on the ground the conditions should not have been imposed, as was expressly stated in these regulations. Although paragraph 77(iii) of the APOC refers to the absence of any consultation before imposition of these conditions, they were not imposed as a disciplinary measure under the Academic Regulations - where a meeting was first required with a right of address - but were indicated in, and laid down pursuant to, the Residence Regulations. Such consultation was not contractually required, and they were standard and reasonable conditions, as accepted on the Claimant's behalf at trial, and indeed ones which he had already accepted.

252. That such an appeal was described when introduced, and in the Residence Regulations in the 2010-11 year's Handbook, as 'similar' to that prescribed by the Academic and Disciplinary Regulations, where those applied, did not mean that the whole of the Academic and Disciplinary Regulations applied. 'Similar' was in my judgment an apt description because although an appeal was permitted to take place, the basis, and aims, of the return to residence policy were different to those relating to disciplinary matters, as indicated in paragraphs 244-246 above, and the appeal panel would not be looking at whether the failure was excusable in the context of the breach of a *disciplinary* sanction, but rather at whether a student was medically and academically fit and able to return.

253. On 14 November 2009 Sir Ivor Crewe, the Master of the College, informed the Claimant in writing, through an e-mail to his mother, that in order to return in October 2010 following his intermission due to ill health he would need to be certified fit to return to study, and to sit Collections, and to pass them to a downwardly adjusted standard, as set out in paragraph 127 above.

254. This was entirely within the Residence Regulations (ie 'Residence' part of the Handbook), and these were, as was accepted at trial "standard conditions which the College was entitled to impose".

255. The Claimant failed, however, to sit Collections and on 6 October 2010 the Tutorial Committee met and confirmed that he had not therefore met the conditions for his

return to College following intermission. He was, however, notified by letter from Farrers dated 8 October 2010 that he had the opportunity to appeal against the cessation of his membership of the College limited to the ground that his failure to meet the condition was excusable, although not on the ground that the condition itself as to Collections should not have been imposed.

256. This was the appropriate appeal mechanism set out in the Residence Regulations in relation to a student who did not meet the conditions set to enable him to return to College after intermission.

257. As I have said above, there was an erroneous attachment to that letter simply of Appendix E to the Academic Regulations, but that was corrected and the applicability of the Residence Regulations set out in a subsequent letter, with which a copy of them was provided.

258. The appeal hearing took place on 25th November 2010. The Claimant had the opportunity to be present and Mrs Needham made oral representations on his behalf.

259. The Appeal Panel made their determination as set out in paragraphs 163 – 168 above.

260. The Appeal Panel concluded in it that any further delay in the Claimant becoming assessed as medically fit to continue and satisfactorily taking Collections as necessary precursors to returning in October 2012 would mean the course lost its pedagogic value.

261. This was on the basis not that the Claimant would necessarily be fit or able to sit Collections, but that even if he had a good reason for not doing so, this would, in the judgment of the panel, mean that the course would have lost its pedagogic value.

262. In other words, although the Appeal Panel found the fact that Claimant had not met the conditions set out pursuant to the Residence Regulations was in November 2010 excusable, as he had a good reason for not meeting them which did not at that time prevent him from still completing his degree course, any future failure could not be excused, ie would not be excusable, however good the reason, as it would prevent the Claimant from returning in the academic year starting in October 2011, following which the course would have lost its pedagogic value.

263. A minor delay for good reason which did not prevent the re-start of the course in October 2011 might nonetheless be capable of being tolerated, but it was made clear that any delay of substance (ie which would effectively prevent the October 2011 re-start date) would mean a return to the course was just not viable because it would have lost its pedagogic value. This was so even though it might be through no fault of the Claimant's.

264. The corollary is not that it must be the fault of the College. It was not, in this case, for the reasons I have given above. It was simply the result of circumstances, with the course having been deferred by the Claimant so many times over so many years.

265. The Appeal Panel was very clear on determining the appeal that the requirements they set down provided a final opportunity beyond which it was not possible to go.

266. In relation to the Residence Regulations requirements, the Claimant had failed to meet the conditions for a return into residence after an intermission granted by the College, an appeal was allowed, and this was the result of the contractually laid down appeal procedure.

267. Although 'expulsion' was not the best phrase to be used, the Residence Regulations did not relate to the disciplining of the student but to ensuring their ability to return to a degree course which retained academic value and integrity.

268. The Appeal Panel appears to have considered the matter carefully, and its decision as to whether any further substantive delay (extending the re-start date beyond the beginning of the 2011 academic year) were matters of academic judgment. Matters of academic judgment are not matters with which the court is able, or competent, to interfere: see eg *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR 1988.

269. The Claimant's counsel in his closing submissions referred to the judgment of Chadwick LJ for the Court of Appeal in *R v Cambridge University ex parte Persaud* [2001] EWCA Civ 534 at paragraph 41 as follows,

> "41. I would accept that there is no principle of fairness which requires, as a general rule, that a person should be entitled to challenge, or make representations with a view to changing, a purely academic judgment on his or her work or potential. But each case must be examined on its own facts. On a true analysis, this case is not, as it seems to me, a challenge to academic judgment; it is a challenge to the process by which it was determined that she should not be reinstated to the Register of Graduate Students because the course of research for which she had been admitted had ceased to be viable. I am satisfied that that process failed to measure up to the standard of fairness required of the University."

270. That was a judicial review claim. Counsel for the Claimant says that in the present case, which is a claim in contract, the Claimant is not taking issue with matters of academic judgement, but the *procedure* by which the decision was taken to end his membership of the College.

271. This is on the basis that (a) the Academic Regulations applied and were an enforceable term of the contract, (b) s13 of the Supply of Goods and Services Act 1982 Act was breached on the specific bases set out in the (Amended) Particulars of Claim (though conceded to be outside the limitation period), and (c) these matters fall outside what is accepted to be the academic judgment immunity because they are about procedural error and poor or non-existent quality of provision.

272. However, in the present case, the process was, it is agreed, governed by the terms of

the contract, and I have found the relevant part of the contract to be that set out in the 'Residence' section of the College's 2010-11 Handbook, and that it was followed, with no procedural error.

273. The question is whether, in the course of following the applicable contractual procedure, the making of an academic judgment made by the Appeal Panel that the Claimant's degree course would have lost its pedagogic value if he did not re-start his studies at the beginning of the academic year 2011-12 is open to challenge contractually.

274. In my judgment, it is not. The procedure was properly followed and it is not disputed, as I understand it, that matters of academic judgment are, on the authorities a matter for the court. It could not be, indeed. As was stated by Burnett J (as he then was) in paragraph 58 of *Abramova v Oxford Institute of Legal Practice* [2011] EWHC 613 (QB), by reference to Lord Wolf MR's judgment in *Clark v University of Lincolnshire and Humberside* (above), as a result "most claims brought in contract which amounted to a challenge to academic process would be struck out".

275. The claim has not been struck out here because of the allegations of breach of the applicable contractual provisions contained in the Academic Regulations (and more particularly paragraphs 2(a), 2(b) and 3(a) of them, under the heading 'Disciplinary Measures on Academic Grounds'), but I have rejected the applicability of them, and therefore any such breach, for the reasons I have given.

276. The Claimant's counsel also quoted the judgment of Males J in *R (Mustafa) v OIA* [2013] EWHC 1379 (Admin) where he said that in many cases the question of non-justiciability of the courts in relation to 'academic judgment' "will have to be considered case by case, with the possibility that nice questions will arise, the answers to which will no doubt be affected to some extent by whether the issue raised is one which the court regards itself as competent to determine".

277. In the present case, the Appeal Panel's decision was in my judgment plainly a matter of academic judgment and I do not consider myself competent to determine the matter for myself, although I can well understand how it came to be reached given the length of delay there had been in the Claimant's studies, and there was no complaint about it at the time.

278. The decision of the Appeal Panel based on its academic judgment gains added support from the views of the Pro-Vice-Chancellor (Education) set out in the University's letter of 12 May 2011 to which I have referred in paragraph 174 above.

279. Furthermore, there is no expert or other evidence to show that the Appeal Panel's judgment as to pedagogic value was wrong, let alone one that it could not reasonably have come to it in exercising reasonable care at the time. There is nothing to show that the exercise of its judgment was not in accordance with reasonable professional standards of those called on to exercise such judgment – or, in contractual terms, provided without reasonable care and skill.

280. Indeed, the judgment of the Appeal Panel as to pedagogic value is not challenged in the APOC. The closest matters appear to come is to say in paragraph 77(v) that 'on August 25th 2011 a decision was made to terminate the Claimant's studies without having regard to the very good reason for not being able to comply with the requirement to sit re-entry collections that month'.

281. I will deal with what occurred after the Appeal Panel's decision in a moment, but the reasons for the Claimant being unable to comply, however sympathetic the court may be to them, did not unfortunately mean that the course had not lost its pedagogic value if delayed any further, as the Appeal Panel, exercising its academic judgment, decided.

282. I would also add that is very doubtful on the basis of the letter of 12 May 2011, to which I have referred in paragraph 174 above, whether the University (ie the separate institution actually awarding degrees) would in any event have permitted a further deferral by way of granting dispensation from Part 1B exams in summer 2013, and I think it is unlikely.

283. Going back to what occurred, however, when the Claimant failed thereafter to have a psychiatric assessment of fitness and to sit Collections (with the chance to acclimatise in College before doing so being lost only because he had not undergone such assessment), and further delay was sought which would have put the re-start date for his course back beyond the start of the October 2012 academic year, the Appeal Panel's decision that his studies at the College were necessarily at an end was put into action.

284. There was in my judgment no breach of the applicable regulations in relation to this.

285. The Academic Regulations did not apply and the College was not contractually required to give the Claimant an opportunity under paragraphs 2a and 2b of them to have a meeting with the senior tutor and others first (with notice of hearing and grounds for measure under paragraph 5) as alleged. Nor was there required to be an opportunity under paragraph 3a of them to have an opportunity to appeal following the Tutorial Committee having decided to take a disciplinary measure, because no disciplinary measure was imposed.

286. The position was that standard and reasonable conditions for return to residence following intermission were set out by the Master of the College pursuant to the Residential Regulations, those conditions were not met, an appeal under them was made (the ambit of which was borrowed from paragraph 3c of the Academic Regulations), and the Appeal Panel set down a final set of requirements which, when not met, meant the Claimant's membership of the College was automatically at an end - not because of any fault of the Claimant or the College but because it meant the course could not re-start in October 2012 and had lost its pedagogic value, which has not been shown to be other than a reasonable judgment the Appeal Panel was competent and entitled to make.

287. Were it otherwise, two further points would arise.

288. First, even if it had contractually been provided for, though, it was not, any appeal against the carrying into effect of the decision of the Appeal Panel (though not in my judgment provided for) was not exercised by the Claimant or attempted to be exercised. There is nothing to suggest he thought a further appeal was possible, any more than those in the College did, but had there been such a contractual right he was not prevented from exercising it and denied the ability to do so. He did not in fact seek to appeal, and had he done so it cannot be assumed what the College would then have done with the benefit of legal advice which was never given and faced with the practicalities of a situation which never arose.

289. The view of Sir Ivor Crewe in evidence years later that there was no further ability to appeal does not alter the fact that if there was a contractual right to this (though I find there was not), it was not sought to be made and that the College were not in breach of contract in preventing it.

290. Second, there is nothing to suggest a meeting of tutors or a further appeal panel would have come to a different decision in the exercise of its academic judgment in relation to the expiry of the pedagogic value of the Claimant's course. It is unlikely it would have done so, and there is no significant chance it would now do so, 12 years since the Claimant left the University, were an order for an injunction and specific performance to be made as sought.

291. I should return finally for completeness to the letter Farrers wrote on 15 August 2011 setting out as the only viable option to meet the timeline at that stage, the parties agreeing a "truncated appeals process". As I have said in paragraphs 193 to 195 above, I consider they had in mind an appeal in relation to any dispute as to the academic standard shown by the Claimant's performance in Collections if he sat them, not the position if he did not sit the Collections at all, where the position would be in no doubt – he had either sat them or not, no adjudication could be required as to the standard he had achieved in them, and the Appeal Panel's determination meant that he could not return for the start of the October 2011 term and his studies would necessarily be at an end. However, if Farrers considered otherwise, that did not accord with the true contractual position, and the Claimant did not accept sitting the Collections on the basis of the appeal process they offered there.

292. It is also to be noted that, aside from the "academic conditions" Farrers referred to in their letter, the Claimant had also, separately, failed to satisfy the Appeal Panel's demonstration of medical fitness requirements, which were not referred to by Farrers as subject to any possible appeal, in addition to which, paragraph 288 above would fall to be repeated had there been any wider rights of appeal.

293. Turning to paragraph 77 of the APOC:

(i) As set out above, I find there was no systematic failure nor any breach in relation

to the College's provision of support as there alleged or at all, though any breaches prior to 22 August 2011 would be statute barred in any event.

(ii) There was no actionable or causative failure by the College to adhere to an agreement reached at the meeting with Dr Brown and Mrs Poulter on 1 July 2010. Any 'agreement' as to what was intended to be done was not intended in itself to create legal relations and whilst Dr Brown said he would expect a draft support contract to be received by him from the University within 28 days, that was for support in relation to the return of the Claimant to his course, which never took place because the Claimant did not satisfy the conditions laid down by the Appeal Panel in relation to medical, let alone academic, fitness to so return. Furthermore, the University are not a party to the action, aside from the fact that any breach of contract prior to 22 August 2011 is accepted to be statute barred in any event.

(iii) The conditions that had been imposed in relation to the Claimant's re-entry to College were standard and reasonable conditions, as has been conceded, and were expressly accepted by him (aside from the limitation point).

(iv) The Academic Regulations did not apply and I have dealt with this and the Residence Regulations which did apply, of which I have found there was no breach.

(v) The fact that the Claimant's course studies were at an end was a result of the academic judgment of the Appeal Panel that the course, in being delayed beyond a re-start date of the beginning of the 2011-12 academic year, had lost its pedagogic value and is unimpeachable having regard to the nature of the judgment to be made, and, were it otherwise, on the evidence before the court. Transfer to another University had been raised before, with complaint being made by the Claimant about this having been done, and the College was under no contractual duty to raise any such possibility with him again in August 2011.

294. For completeness, there is a reference in paragraph 76(ii) of the APOC to the alleged services required to be provided by the college including "facilities to be provided to the Claimant to meet the needs arising from his disability". There is no allegation of breach in relation to this, save that the allegations in paragraphs 77(i) and (ii) are as I have set them out above, and which I have rejected. It is to be noted, however, in this context, as I have already done, that this is not a disability discrimination claim, which has previously been struck out, and it is not possible to seek to litigate such claims, which have a 6 month primary time limit, by the back door in a contract action brought several years later.

Conclusion

295. For the reasons I have given, the claim must be dismissed. I wish everyone who has been involved in this long-standing action, well, including the Claimant, who I hope will now be able to put matters from his time at Oxford behind him and move on, with the success in life that I do not doubt he can have.